

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

NICHOLAS TYLER WRASPIR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-23-1065-D
	)	
DAN DAY, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

This matter comes before the Court for review of the Report and Recommendation [Doc. No. 19] issued by United States Magistrate Judge Shon T. Erwin on June 28, 2024, pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). Upon initial screening of Plaintiff's Amended Complaint [Doc. No. 5], Judge Erwin recommends the dismissal without prejudice of some defendants and some claims under 42 U.S.C. § 1983.

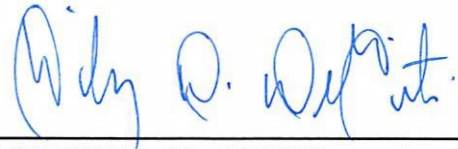
The case file shows no timely objection to the Report nor request for an extension of time, even though Plaintiff was expressly informed of his right to object, the deadline for doing so, and the firm waiver rule. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). Therefore, the Court finds that Plaintiff has waived further review of all issues addressed in the Report. *See id.*; *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, for the reasons explained by Judge Erwin, the Court finds that the Amended Complaint fails to state a claim against Defendants in their official capacities and fails to state a claim against Defendants Dan Day or Dean Naylor in their individual capacities but that Plaintiff's allegations are sufficient to state a plausible § 1983

claim for damages against Defendant Larry Stevens individually for use of excessive force in violation of the Eighth or Fourteenth Amendment.

**IT IS THEREFORE ORDERED** that the Report and Recommendation [Doc. No. 19] is **ADOPTED** in its entirety. Plaintiff's action against Defendants Dan Day and Dean Naylor, in their individual and official capacities, is dismissed without prejudice. Plaintiff's action against Defendant Larry Stevens in his official capacity is dismissed without prejudice.

**IT IS FURTHER ORDERED** that Plaintiff's § 1983 claim against Defendant Larry Stevens in his individual capacity, as identified in the Report and described herein, shall proceed. The case remains under referral to Judge Erwin for further proceedings.

**IT IS SO ORDERED** this 22<sup>nd</sup> day of July, 2024.



---

TIMOTHY D. DeGIUSTI  
Chief United States District Judge